

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ALBERTO MABASSA ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 45554. May 27, 1938*

Ponente: CONCEPCION, J.

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This is a case of robbery with homicide. Domingo Tagalog, one of the defendants, was sentenced on his plea of guilty. Alberto Mabassa, Abelardo Labao and Silverio Uy, the other three defendants, were tried, found guilty and sentenced, and they now appeal from the sentence.

The evidence on which conviction was based consists of the testimony of Maria Aquino, a child of ten years; the ante mortem declaration made by the deceased Clemente Aquino before his brother-in-law Federico Paguirigan and the barrio lieutenant, Inocencio Bacani; and the testimony of the coaccused Domingo Tagalog.

The appellants contend that the lower court erred in giving credit to the testimony of Maria Aquino. This child testified that on the night of July 25, 1936, while her father, brothers and herself were sleeping in the sala of the house, located on Hacienda San Francisco, municipality of Tumauni, Isabela, they were awakened by the noise of the chickens under the house. Carrying a bolo, Clemente Aquino went down to see what was happening to his fowls. Maria Aquino followed her father with a kerosene lamp and stationed herself at the door leading to the stairs; from there she saw that as soon as her father reached the ground the defendants Alberto Mabassa and Silverio Uy seized him by the hands while the other defendant, Domingo Tagalog, attacked him with a bolo, wounding him on the head and the right hand. In the meantime, Abelardo Labao, the other accused, emerged from under the house carrying the chickens. All the defendants then fled into the darkness of the night. Clemente Aquino, however, as soon as he was able to free himself from the hold of his assailants, struck and wounded Domingo Tagalog on the head with his bolo.

The appellants contend that the testimony of Maria Aquino is improbable, inconsistent and ridiculous. The lower court, however, considered it convincing and this court regards it as entirely satisfactory. There is nothing improbable in the girl's being awakened by the noise of the chickens which were disturbed when the defendants entered under the house. Neither is it anomalous or incredible that this girl, on seeing her father get up and snatch a bolo, should also get up and take hold of a kerosene lamp to give light to her father who went down the stairs of the house. It is not true that the child, dazzled by the lamplight, could not have seen the defendants, because she was holding the lamp with one hand slantwise about two feet away from her face, which is perfectly natural, because a person who tries to light up anything, will not hold up the light directly in front of his eyes so as to block his view entirely, but will so hold it as not to obstruct his view and as to help him see the object of his search. Neither is it strange or improbable for the child Maria Aquino to be able to identify the defendants because she has known them long before the night of the crime. Nor is her testimony incredible that Abelardo Labao was the one who took the chickens from under the house if she saw, as she in fact did, that Labao emerged from under the house with the chickens. The testimony of Maria Aquino in the light of all the circumstances being sincere and free from suspicion, it alone is sufficient to sustain the conviction of the appellants. (U. S. vs. Ambrosio and

Falsario, 17 Phil., 295; U. S. vs. Tan Teng, 23 Phil., 145; People vs. Sasota, 52 Phil., 281; and People vs. Alambra and Garcia, 55 Phil., 573.)

However, the testimony of Maria Aquino is not the sole evidence that proves the guilt of the appellants; there is also the ante mortem declaration of her father, Clemente Aquino. After the defendants had fled, the deceased, bleeding from his wounds, decided to go with his children to the house of his brother-in-law, Federico Paguirigan, in barrio Pilig, two kilometers distant. They covered the distance on foot and when they arrived at Federico's house, Clemente, feeling very weak from his bleeding wounds and undoubtedly from exhaustion, immediately lay down, telling his brother-in-law as is natural, that he was wounded by the defendants while they were stealing his chickens. He also told him that he was not sure he would live and made the request that the barrio lieutenant, Inocencio Bacani, be informed of what had occurred. Federico did as he was asked and also informed another brother, Cipriano Aquino, of what happened to Clemente. Bacani, the barrio lieutenant, went to Federico's house and there found Clemente lying on the floor and bleeding from wounds on the head and the hand. Questioned by Bacani, Clemente related how he came to be wounded by the defendants on the occasion when they were stealing his chickens. The barrio lieutenant asked how he felt and Clemente answered that he was very weak and felt that he was going to die. On the afternoon of the following day, Julio Taccad, the chief of police, also arrived at the house of Federico and tried to ask Clemente some questions, but the latter could no longer speak intelligibly.

The ante mortem declaration of the deceased is impugned by the appellants who allege that, according to the testimony of Dr. Florencio Firme, who examined the wounds of the deceased three days after the occurrence, the wound on the head, which was supposed to be the most serious of the three inflicted on the deceased, was not serious or necessarily mortal. In other words, Clemente was not in imminent danger of death from his wounds when he made the ante mortem declaration naming the appellants as his assailants; and the fact that he died later is immaterial as his death was not caused by the seriousness of the wounds but by the infection that later set in.

The admissibility of an ante mortem declaration is not affected by the fact that the declarant died hours or days after making his declaration. It is sufficient that he believed himself in imminent danger of death at the time of such declaration. (U. S. vs. Gil, 13 Phil., 530; U. S. vs. Mallari, 29 Phil., 14; People vs. Dizon, 44 Phil., 267; and People vs. Serrano, 58 Phil., 669.)

When Clemente Aquino revealed to his brother-in-law Federico Paguirigan and the barrio lieutenant, Inocencio Bacani, that the defendants wounded him on the occasion of the robbery of his chickens, he stated that he felt he was going to die, and in fact he died later. The circumstance that death occurred three days after the aggression does not detract from the probative value of the evidence.

The incriminating evidence against the accused consists not only of the testimony of the girl Maria Aquino and the ante mortem declaration of the deceased Clemente Aquino but also the testimony of Domingo Tagalog, a codefendant, who stated that he was with the appellants when they stole the chickens and when Clemente was attacked and wounded.

The testimony of Domingo Tagalog is impugned by the appellants who allege that, owing to its corroborative nature, the same should have been presented together with the other evidence of the prosecution and not as additional evidence after both the prosecution and the defense had rested. But it is a well-settled rule that the court, without committing an error, may, in the exercise of its discretion, receive evidence of this nature. (U. S. vs. Tria, 17 Phil., 303.) The appellants contend, however, that this discretion may be exercised by the court only when the substantial rights of the accused will not thereby be prejudiced. We do not see how it can be said that the defendants in this case were prejudiced, when they have had ample opportunity to present evidence in their defense.

It is further argued by the appellants that there being no positive proof of conspiracy between them and the accused Domingo Tagalog, the latter's testimony is incompetent and inadmissible as against them.

As is very well answered by the Solicitor-General in his brief, the appellants confuse the extrajudicial admissions or confession made by a coconspirator extrajudicially with the testimony of a coaccused given at the trial.. The first is admissible only against the declarant while the second is perfectly admissible against his coaccused. (People vs. Sabacahan, G. R. No. 42664, April 8, 1935 [61 Phil., 1034]; People vs. Parcon, 55 Phil., 970; U. S. vs. Maharaja Alim, 38 Phil., 1; U. S. vs. Remigio, 37 Phil., 599; and People vs. Badilla, 48 Phil., 718.)

Considering all that has been said, the crime committed by the defendants is, without doubt, robbery with homicide and not theft and homicide, as claimed by the appellants, because it has been established by the evidence that the defendants used violence on the person of the deceased Clemente Aquino when they robbed him of his fowls.

The aggravating circumstances of nocturnity and abuse of superior strength were present in the commission of said crime of robbery with homicide, and there being no mitigating circumstance to offset them, the capital penalty should be imposed on the accused; however, in the absence of clear and satisfactory evidence that the defendants deliberately sought the night for the commission of the crime, the members of this court are not unanimous with respect to the aggravating circumstance of nocturnity nor the imposition of the capital punishment. We, therefore, affirm the appealed judgment sentencing the defendants to reclusion perpetua, with the accessories of the law, to indemnify jointly and severally the heirs of Clemente Aquino in the sum of P1,000, restore the stolen fowls or their value, and to pay the costs. So ordered.

Villa-Real, Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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